UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)[1]

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OUTLINE OF INSTRUCTION

I. REFERENCES.

A. Uniformed Services Employment and Reemployment Rights Act (USERRA), P.L. 103-353, 108 Stat. 3149 (1994), as amended, codified at 38 U.S.C. §§ 43014334.

B. Department of Defense Instruction 1205.12, Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Armed Forces (4 Apr. 1996 w/ch. 1, 16 Apr. 1997).

C. Army Regulation 27-3, The Army Legal Assistance Program, para 3-6e (21 Feb 96).

D. Restoration to Duty from Uniformed Service, 5 C.F.R. Part 353 (2004).

E. [MSPB] Practices and Procedures for Appeals Under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunity Act, 5 C.F.R. Part 1208 (2004).

F. Lieutenant Colonel H. Craig Manson, *The Uniformed Services Employment and Reemployment Rights Act of 1994*, 47 A.F. L. REV. 55 (1999).

G. Anthony H. Green, *Reemployment Rights Under the Uniformed Services Employment and Reemployment Rights Act (USERRA)*, 37 IND. L. REV. 213 (2003).

H. Ryan Wedlund, *Citizen Soldiers Fighting Terrorism: Reservists' Reemployment Rights*, 30 WM. MITCHELL L. REV. 797 (2004).

I. Jeffrey M. Hirsch, *Can Congress Use Its War Power to Protect Military Employees from State Sovereign Immunity?*, 34 SETON HALL L. REV. 999 (2004).

J. Lieutenant Colonel Paul Conrad, *USERRA Note, How Do You Get Your Job Back?*, ARMY LAW., Aug. 1998, at 30.

K. Lieutenant Colonel Paul Conrad, *Labor Law Note, Merit System Protection Board*
Addresses the Uniformed Services Employment and Reemployment Rights Act, ARMY LAW., Sept. 1997, at 47.

L. Government Accountability Office Report (GAO-02-608), *Reserve Forces: DoD Actions Needed to Better Manage Relations between Reservists and Their Employers* (June 2002).

M. Government Accountability Office Report (GAO-05-74R), *U.S. Office of Special Counsel's Role in Enforcing Law to Protect Reemployment Rights of Veterans and Reservists in Federal Employment* (6 Oct. 2004).

N. Department of Labor, USERRA Final Rules, 20 C.F.R. Part 1002 (19 Dec 2005).

II. STATE OF UTAH VERSION OF USERRA: Utah Code 39-1-36

"(1) Any member of a reserve component of the armed forces of the United States who pursuant to military orders enters active duty, active duty for training, inactive duty training, or state active duty shall upon request be granted a leave of absence from employment, but for no more than five years.

(2) Upon satisfactory release from the training or from hospitalization incidental to the training, the member shall be permitted to return to the prior employment with the seniority, status, pay, and vacation the member would have had as an employee if he had not been absent for military purposes.

(3) Any employer who willfully deprives an employee who is absent as a member under Subsection (1) of any of the benefits under Subsection (2) or discriminates in hiring for any employment position, public or private, based on membership in any reserve component of the armed forces, is guilty of a class B misdemeanor."

III. OVERVIEW.

A. Although a number of benefits are available under the law, the USERRA's main provisions call for reinstatement of civilian employment following the conclusion of periods of duty with the armed forces.

B. This outline considers USERRA from the standpoint of the following three questions:

1. What are the prerequisites (i.e., requirements) for a returning service member to gain the protections of USERRA?

2. What are the specific reemployment protections granted by USERRA?

3. How are the USERRA protections enforced if an employer does not comply with the law?

IV. PREREQUISITES FOR APPLICATION OF STATUTE. [38 U.S.C. § 4312].

A. **Employee must have held a civilian job.**

1. USERRA applies to virtually all employers: the federal government, state governments, and all private employers. (There are no exceptions based on size.)

2. Even a temporary job may get USERRA protections, if there was a "reasonable expectation that employment will continue indefinitely or for a significant period." The burden is on employer to prove that the job was not permanent.

B. **Employee must have given prior notice of military service to civilian employer.**

1. Statute requires notice. It does not require written notice. A writing will, however, minimize disputes and proof problems.

2. Notice may be given by the service member or by a responsible officer from the service member's unit.

3. Exceptions: "military necessity" precludes notice (e.g., fact of deployment is classified) or where giving notice would be otherwise "unreasonable." Clear from legislative history, and case law construing predecessor legislation, that this exception will be construed narrowly. The service member should give notice as soon as possible.

C. **Employee's period of military service cannot exceed five years.**

1. Five-year limit on military service is cumulative.

2. The five-year clock restarts when employee changes civilian employers.

3. Some types of service (e.g., periodic/special Reserve/NG training, service in war or national emergency, service beyond five years in first term of service) do not count toward the five-year calculation. See Appendix A for a discussion of exceptions to the five-year rule.

4. The five-year period does not start fresh on 12 December 1994 (effective date of USERRA) - it reaches back to include all periods of military service during employment with given employer, unless such service was exempted from older Veterans' Reemployment Rights Act's (VRRA) [1] four-year service calculations.

D. **Employee's service must have been under "honorable conditions" - that is, no punitive discharge, no OTH discharge, and no DFR.**

1. For service of 31 (or more) days, employer can demand proof of honorable conditions.

2. Proof can consist of a DD Form 214, letter from commander, endorsed copy of military orders, or a certificate of school completion.

E. **Employee must report back or apply for reemployment in a timely manner.**

1. If service is up to 30 days, the servicemember must report at next shift following safe travel time plus 8 hours (for rest).

2. If service is from 31 days to 180 days, the servicemember must report or reapply within 14 days.

3. If service is for 181 days or more, the service member must report or reapply within 90 days.

[1] Commonly referred to as "The Veterans' Reemployment Rights Act," the USERRA's antecedent legislation "was never an 'Act' with its own special title." Lieutenant Colonel H. Craig Manson, *The Uniformed Services Employment and Reemployment Rights Act of 1994*, 47 A.F.L. REV. 55 at n. 9, 57 (1999).

4. Extensions are available if employee can show that it was impossible or unreasonable, through no fault of the employee, to report or reapply.

5. Reapplication need only indicate that:

   a. Service member formerly worked there;

   b. Service member is returning from military service; and,

   c. Service member requests reemployment pursuant to USERRA.
   d. The request need not be in writing. Written request for reemployment is preferred and will hopefully work to avoid disputes and proof problems.

6. A service member who fails to comply with USERRA's timeliness requirements does not lose all USERRA protections. The employer, however, is entitled to treat (and discipline) that employee's late reporting just like any other unauthorized absence.

V. PROTECTIONS. [38 U.S.C. §§ 4311-18.]

A. **Prohibition against Discrimination:** 38 U.S.C. 4311(a) broadly protects against discrimination against service members, those who apply to be service members, and individuals who help protect service members rights.

1. **Motivating Factor:** An employer has engaged in discrimination if the military service was a "motivating factor" in the employer's action unless the employer can prove that the action would been taken in the absence of the military service.

i ***Staub v. Proctor Hosp., 562 U.S. 411 (2011)****:* Held that if an employer takes adverse action against a service member based in part on someone else's actions that are motivated by military animus, then the employer may be liable under USERRA even if the employer directing the action had no animus towards the military.

B. **Prompt Reinstatement.** If the employee was gone 30 (or fewer) days, the employee must be reinstated immediately; if gone 31 (or more) days, the reinstatement should take place within a matter of days.

C. **Leave of absence and reinstatement**.

1. 38 U.S.C. § 4316 amended in 2000 added subsection e.

2. Employers must grant an authorized leave of absence when necessary for employee to perform funeral honors duty under either 10 U.S.C. § 12503 or 32 U.S.C. § 115.

3. *See also* 38 U.S.C. § 4303(13)(includes "funeral honors duty" within definition of "service in the uniformed services").

D. **Status.** The employee may object to the proffered reemployment position if it does not have the same status as previous employment. Examples:

1. "Assistant Manager" is not the same as "Manager," even if both carry the same remuneration.

2. One location or position may be less desirable than another (geographically, by earnings potential, or by opportunity for promotion).
3. A change in shift work (from day to night, for example) can be challenged.

E. **Seniority.** If the employer has any system of seniority, the employee returns to the "escalator" as if he or she had never left the employer's service.

1. If the service was for 90 days (or less), the employee is entitled to the same job (plus seniority). If the service was for 91 days (or more), the employee is entitled to the same "or like" job (status and pay), at employer's option, plus seniority.

2. Seniority applies to pension plans as well (including SEP, 401(k) and 403(b) plans). The seniority principle protects the employee for purposes of both vesting and amount of pension.

   a. If the employer has a plan that does not involve employee contribution, employer must give employee pension credit as if employee never left.

b. If the pension depends on a variable that is hard to estimate because of the employee's absence (e.g., amount of accrued pension depends on percent of commissions earned by employee), employer may use what employee did in the 12 months before service to determine pension benefits. Employer may not, in any case, use military earnings as basis to figure civilian pension accrual.

c. If the employer has a plan that involves employee contributions, employee must make up the contributions after returning to work. The employee has a period of three times the period of absence for military service, not to exceed five years, to make up the contributions. The employer may charge no interest.

F. **Health Insurance.**

1. Immediately upon return to the civilian job, the employee (and his/her family) must be reinstated in the employer's health plan. The employer may not impose any waiting period or preexisting condition exclusions, except for service-connected injuries as determined by the Department of Veterans Affairs.

2. USERRA also offers continued employer health coverage, at the option of the employee, during the military service. (Federal employees should refer to 5 C.F.R. §890.305 (2004).)

a. Employers must, if requested, continue employee and family on health insurance up to first 30 days of service. Note: TRICARE does not cover dependents on tours of less than 31 days. Cost to employee cannot exceed normal employee contribution to health coverage.

b. Employees may request coverage beyond 31 days. Employer must provide this coverage up to 180 days or end of service (plus reapplication period), whichever occurs first. However, employers may charge employees a premium not to exceed 102% of total cost (employee + employer) of the entire premium from the first day of any tour over 30 days.

c. Period of coverage is for up to 2 years.

G. **Training, Retraining, and Other Accommodations.** An employee who returns to the job after a long period of absence may find his/her skills rusty or face some new organization or technology. An employer must take "reasonable efforts" to requalify the employee for his/her job.

1. "Reasonable efforts" are those that do not cause "undue hardship" for the employer. A claim of "undue hardship" requires an analysis of the difficulty and expense in light of the overall financial resources of employer (and several other factors). The USERRA language is similar to that employed in the Americans with Disabilities Act (ADA).

2. If the employer cannot accommodate the employee, the employer must find a position which is the "nearest approximation" in terms of seniority, status, and pay.

H. **Special Protection Against Discharge.** Depending on the length of service, there are certain periods of post-service employment where, if the employee is discharged, the employer will have a heavy burden of proof to show discharge for cause. This provision is a hedge against bad faith or pro forma reinstatement.

1. For service 181 days (or more), the subsequent protection lasts a year.

2. For service of 31 days to 180 days, the subsequent protection lasts for 180 days.

3. There is no special protection for service 30 (or less) days. However, the statute's general prohibition against discrimination or reprisal applies.

a. Employers cannot discriminate in hiring, employment, reemployment, retention in employment, promotion, or any other benefit of employment because of military service. Not only are current Active and Reserve Component military members covered, but so are veterans. See ***Petersen v. Dep't of Interior***, 71 M.S.P.R. 227 (1996).

b. Employers cannot require someone to use vacation time/pay for military duty [38 U.S.C. § 4316(d)]. See ***Graham v. HallMcMillen Company, Inc.***, 925 F. Supp. 437 (N.D. Miss. 1996) (Reservist may not be fired for complaining about employer requiring him to use vacation pay/days for military duty.)

c. Employers may not take adverse action against anyone (not just the military employee) when that person testifies or assists in a USERRA action or investigation or when that person refuses to take adverse action against a military employee. ***Brandsasse v. City of Suffolk***, 72 F.Supp.2d 608, (E.D. Va. 1999) (Police Department may not initiate internal affairs investigation against Reservist police officer in retaliation for requesting accommodations to attend Reserve training.)

d. Federal military veteran/Reserve employees may raise "hostile work environment" discrimination claim based upon the individual's military status. See ***Petersen v. Dep't of Interior,*** 71 M.S.P.R 227, 1996 MSPB LEXIS 735 (1996).

I. **Other Non-Seniority Benefits.** If the employer offers other benefits, not based on seniority, to employees who are on furlough or nonmilitary leave, the employer must make them available to the employee on military service during the service. (For federal employees, see 5 C.F.R. §353.106 9(c).)

1. Examples: employee stock ownership plans (ESOP), low cost life insurance, Christmas bonus, holiday pay, etc.

2. If the employer has more than one leave/furlough policy, the military employee gets the benefit of the most generous. However, if policies vary by length of absence, the military employee may only take advantage of policies geared to similar periods of absence (e.g., 6 months, 1 year, etc.) of absence.

3. The employee may waive the right to these benefits if the employee states, in writing, that s/he does not intend to return to the job. Note, however, that such a written waiver cannot deprive the employee of his other reemployment rights should he "change his mind" and seek reemployment.

J. **Location of Employment**. ***Hill v. Michelin North America, Inc.,*** 252 F.3d 307 (4th Cir. 2001).

1. Court notes that "USERRA defines 'benefit of employment' as 'any advantage, profit, privilege, gain status, account or interest' arising from an employment contract, including 'the opportunity to select work hours or location of employment.'" (Citing 38 U.S.C.A. § 4303(2).)

2. Facts in dispute about whether employee's transfer was at his request or improperly motivated due to his service in the USNR.

3. Regardless, transfer was from one section of plant described as "a clean working environment [where] employees are allowed to wear street clothes and [where they] are not required to shower at the end of their shifts."

4. Held, *in dicta*, that these were benefits of employment when employee transferred to section of plant described as "very dirty and [where] employees are required to wear coveralls and to shower at the end of their shifts."

K. **Compensation and related matters.**

1. ***Wriggelsworth v. Brumbaugh***, 129 F. Supp. 1106 (W.D. Mich. 2001).

a. Facts: Police officer returns from military service. Employer willing to rehire him as a detective. Union objects saying that this will adversely impact other members. Employer hires service member back at an entry level and sues for declaratory judgment to resolve matter. Hired back approximately five months later than he was otherwise ready to return.

b. Service member awarded backpay (difference between entry level pay and detective pay), accrued sick leave prior to entry on active duty, accrued sick leave from time he returned from active duty, accrued seniority, and pension benefits.

c. Service member also awarded clothing allowance even though he did not work as a detective, the position for which the allowance was designed.

2. ***Yates v. Merit Systems Protection Board***, 145 F.3d 1480 (Fed. Cir. 1998).

a. Facts: Plaintiff postal worker enters a 90-day training period with periodic evaluations at 30, 60, and 90 days. Performs two week annual training during first 30 days. Was not given a two-week extension. Although there was an evaluation on the 60th day, she was also not evaluated after 30 days.

b. Holding: A two-week extension and evaluation at the 30th day were benefits of employment.

3. ***Ganon v. Sprint Corp.***, 284 F.3d 839 (8th Cir. 2002).

a. Facts: Retired LTC hired, but salaried at $1000.00 less because he lacked experience in industry.

b. Holding: USERRA does not protect wages as a "benefit of employment."

c. *See also*, 38 U.S.C. § 4303(2).

4. ***Fink v. City of New York***, 129 F. Supp.2d 511, 521 (E.D.N.Y. 2001)(denial of opportunity to take a "promotional" test, a test that serves as a benchmark for promotion, held to be an unlawful employment practice).

L. **Liquidated damages, costs, and attorney fees.**

1. ***Wriggelsworth v. Brumbaugh***, 129 F. Supp. 1106 (W.D. Mich. 2001).

a. Service member's backpay award = $37,356.75 over approximately 2.5 years.

b. Reasonable attorney fees = $32,736.50. (Costs also awarded against employer.)

c. Liquidated damages not awarded.

(1) No showing that employer had acted in a "willful" manner.

(2) Employer had re-hired the service member following a period of active duty.

(3) Employer was the plaintiff in the case seeking to resolve differences between its interpretation of USERRA and

union's interpretation evincing a concern over "effects on other Union members."

d. *Compare*, ***Fink v. City of New York***, 129 F. Supp.2d 511 (E.D.N.Y. 2001)(applies a reckless, instead of willful, standard to question of liquidated damages).

M. **Statue of Limitations:** Pursuant to 38 U.S.C. § 4327, there is no statute of limitations for USERRA claims.

VI. EMPLOYER DEFENSES.

A. The statute, 38 U.S.C. § 4312(d)(1), provides for three defenses.

1. Employer suffers a change in circumstances that make the reemployment impossible or unreasonable.

2. The reemployment of a disabled person or a person who is not suited for the position would pose an undue hardship on the employer.

a. "Undue hardship" means "significant difficulty or expense." (38 U.S.C. § 4303(15).

b. Employer must make "reasonable efforts" to accommodate a disabled person (38 U.S.C. § 4313(a)(3)) and look to place the person "in any other position which is equivalent in seniority, status, and pay" when "the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer" (38 U.S.C. § 4313(a)(3)(A)).

c. When the employer cannot find a position that is an "approximation" to another position, the employer must still look to employ the person in some position that is "consistent with [the] circumstances of such person's case" (38 U.S.C. § 4313(a)(3)(B)).

d. Others who are no longer qualified, but not disabled, receive similar treatment. (38 U.S.C. § 4313(a)(4)).

3. The employment is nonrecurring or brief and such that the person would not have had an expectation of returning. B. Other potential defenses.

1. Waiver.

2. Estoppel.

3. Laches. ***Miller v. City of Indianapolis***, 281 F.3d 648(7th Cir. 2002).

VII. ASSISTANCE AND ENFORCEMENT. [38 U.S.C. §§ 4322-24].

A. The National Committee for Employer Support of Guard and Reserve (1-800336-4590). DoD agency. Provides information on USERRA to employees and employers, and seeks to resolve disputes on an informal basis. National and state ombudsman program first step to resolve employer-employee USERRA disputes. Website: http://www.esgr.org

B. **The Veterans' Employment and Training Service (VETS) (1-202-693-4701, 1-877-889-5627).** Department of Labor agency. Primary responsibility to formally investigate claims of USERRA violations. Website: http://www.dol.gov/vets/. VETS will:

1. Investigate to determine if any violation occurred.

2. In cases of USERRA violation, VETS will attempt to negotiate a suitable resolution with the employer.

3. When resolution is not possible, VETS will refer the case as appropriate (Office of Special Counsel (OSC) for Federal employees or Department of Justice for other employees).

4. Upon referral, the OSC or DOJ may choose to provide counsel for representation free of charge. If they do not, or the veteran does not wish

government representation, the individual may retain private counsel. Action against the employer may then be taken in Federal Court.

5. Veteran NEED NOT request VETS assistance prior to suing, but must wait for completion of VETS action if assistance requested. *See* 38 U.S.C. § 4323 (a).

C. **Formal Enforcement.** Course of action depends on employer. *See generally*, 38 U.S.C. § 4323

1. Private Employers: Action in U.S. District Court. Venue wherever the private employer maintains a place of business.

2. State employees:

a. Cases brought on employee's behalf by the United States are under the jurisdiction of any Federal district court located where the state exercises authority. Originally, the DOJ simply provided free representation to the veteran. Statute changed in 1998 to make the United States the party in interest because of Supreme Court finding in ***Seminole Tribe v. Florida***, 517 U.S. 44 (1996) that Congressional abrogation of State sovereign immunity violates the 11th Amendment of the Constitution. This defense was applied successfully in the USERRA context. *See* ***Palmatier v. Michigan Dep't of State Police***, 981 F. Supp. 529, (W.D. Mich. 1997).

b. 1998 USERRA amendments also provide for personal State court USERRA action by state employee. Availability of that remedy is doubtful in light of the U.S. Supreme Court decision in ***Alden v. Maine***, 119 S. Ct. 2240 (1999) (Held State courts do not have to enforce federal law-based employee damage actions against state agencies since it violates the Eleventh Amendment).

3. VETS has informally retained its policy, dating from the preceding statutory scheme, of not assisting veterans who are represented by counsel.

4. The USERRA adds several new "teeth" to the enforcement of reemployment rights.

a. Gives the DOL (VETS) subpoena power to aid in the conduct of its investigations.

b. Employees who prevail on their claims may be entitled to reinstatement, lost pay (plus prejudgment interest), attorney's fees, and litigation costs. See 5 C.F.R. §1201.202(a)(7).

c. Employees who can demonstrate that reinstatement is not a viable remedy may seek "front pay" damage remedies. *See* ***Graham v. Hall-McMillen Company***, 925 F. Supp. 437, 443-447 (N.D. Miss. 1996).

d. If the court finds that the violation was willful, the court may double the back pay award. Where there is evidence of willful employer noncompliance that could result in a double damage award, a jury trial may be authorized. ***Spratt v. Guardian Automotive Products, Inc.,*** 997 F.Supp.1138 (N.D. Ind. 1998).

5. Extraterritorial Jurisdiction. USERRA gives Reservists and veterans residing overseas protections under the Act, provided that they work for the federal government or a private company incorporated in the United States or controlled by a United States corporation. There is an exception from coverage for foreign companies whose compliance with the Act would violate local national law.

6. Arbitration. The Fifth Circuit held in 2006 that the provisions of USERRA do not preempt an otherwise valid agreement to arbitrate between an employer and an employee. In *Garrett v. Circuit City Stores, Inc.*, the plaintiff, a marine reservist, alleged he was terminated in 2003 during the buildup for Iraqi Freedom because of his status as a Marine Reserve officer. In 1995, as part of a nationwide policy for resolving employment related disputes, Circuit City had promulgated a program which required employees who did not opt out of the program to submit employment disputes to binding arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*. The plaintiff had acknowledged this new program in writing and had failed to opt out. Despite this provision of his employment with Circuit City, plaintiff filed his USERRA claim in federal district court without submitting it to arbitration. The district court denied a defense motion to compel arbitration finding that USERRA preempted the arbitration agreement. The appellate court reviewed this decision *de novo.* After reviewing the text of USERRA, its legislative history, and the underlying principles behind the statute, the appellate

court *reversed* finding that Congress had not intended USERRA to preempt otherwise valid arbitration agreements and holding that USERRA claims are subject to the FAA. Garrett v. Circuit City Stores, Inc., 449 F.3d 675 (5th Cir. 2006). While it did not specifically address the question, the appellate court implied its decision would remain the same even if the Department of Justice had brought the claim on behalf of the plaintiff (see B.4. above relating to enforcement of USERRA rights by a federal agency on behalf of the plaintiff).

APPENDIX A

EXCEPTIONS TO 5 YEAR MILITARY SERVICE LIMIT IN TITLE 38, U.S. CODE SECTION 4312(c) [USERRA]

NOTES:

1. Effective with enactment of the Reserve Officer Personnel Management Act (ROPMA) on October 6, 1994, several section numbers from Title 10 U.S. Code that are referenced as exceptions to the five year limit have been changed.

2. The term "Reservist" means member of the National Guard or Reserve. Sections that apply only to the National Guard or the Coast Guard are identified as such.

3. State call-ups of National Guard members are not protected under USERRA.

Title 38, U.S. Code § 4312(c) "...does not exceed five years, except that any such period of service shall not include..."

Obligated Service -- 4312(c)(1)

Applies to obligations incurred beyond 5 years, usually by individuals with special skills, such as aviators.

Unable to Obtain Release -- 4312(c)(2)

Self-explanatory. Needs to be documented on a case-by-case basis.

Training Requirements -- 4312(c)(3)

10 U.S.C. §10147----------regularly scheduled inactive duty training (drills) and annual training.

10 U.S. C. §10148----------ordered to active duty up to 45 days because of unsatisfactory participation.

32 U.S.C§502(a)----------NATIONAL GUARD regularly scheduled inactive duty training and annual training.

32 U.S.C.§503----------NATIONAL GUARD active duty for encampments, maneuvers, or other exercises for field or coastal defense.

Specific Active Duty Provisions -- 4312(c)(4)(A)

10 U.S.C.§12301(a)----------involuntary active duty in wartime.

10 U.S.C.§12301(g)----------retention on active duty while in a captive status.

10 U.S.C.§*12302*----------involuntary active duty for national emergency up to 24 months.

10 U.S.C.§12304----------involuntary active duty for operational mission up to 270 days.

10 U.S.C.§12305----------involuntary retention of critical persons on active duty during a period of crisis or other specific condition.

10 U.S.C.§688----------involuntary active duty by retirees.

14 U.S.C.§331----------COAST GUARD involuntary active duty by retired officer.

14 U.S.C.§332----------COAST GUARD voluntary active duty by retired officer.

14 U.S.C.§359----------COAST GUARD involuntary active duty by retired enlisted member.

14 U.S.C.§360----------COAST GUARD voluntary active duty by retired enlisted member.

14 U.S.C.§367----------COAST GUARD involuntary retention of enlisted member.

14 U.S.C.§712----------COAST GUARD involuntary active duty of Reserve members to augment regular Coast Guard in time of natural/man-made disaster.

War or Declared National Emergency -- 4312(c)(4)(B)

Provides that active duty (other than for training) in time of war or national emergency is exempt form the 5 year limit, ***whether voluntary or involuntary activation***.

Certain Operational Missions --4312(c)(4)(C)

Provides that active duty (other than training) ***in support of an operational mission*** for which Reservists have been activated under Title 10, U.S. Code §12304 is exempt from the 5 year limit, whether voluntary or involuntary activation. NOTE: In such a situation, involuntary call-ups would be under §12304. Volunteers may be ordered to active duty under a different authority.

Critical Missions or Requirements -- 4312(c)(4)(D)

Provides that active duty in support of certain critical missions and requirements is exempt from the 5-year limit, ***whether call-up is voluntary or involuntary***. This would apply in situations such as Grenada or Panama in the 1980s, when provisions for involuntary activation of the Reserves were not exercised.

Specific National Guard Provisions -- 4312(c)(4)(E)

10 U.S.C. Chapter 15----------NATIONAL GUARD call into Federal service to suppress insurrection, domestic violence, etc.

10 U.S.C.§12406----------ARMY/AIR NATIONAL GUARD call into Federal service in case of invasion, rebellion, or inability to execute Federal law with active forces.